

**TESTIMONY OF ALEXANDER W. INGLE
EXECUTIVE VICE PRESIDENT AND CHIEF FINANCIAL OFFICER
NEW YORK RACING ASSOCIATION
to the
HOUSE BANKING AND FINANCIAL SERVICES COMMITTEE**

June 20, 2000

**TESTIMONY OF ALEXANDER W. INGLE
EXECUTIVE VICE PRESIDENT AND CHIEF FINANCIAL OFFICER
NEW YORK RACING ASSOCIATION
to the
HOUSE BANKING AND FINANCIAL SERVICES COMMITTEE**

June 20, 2000

I thank Chairman Leach for the opportunity to present the views of the horse industry on H.R. 4419, the "Internet Gambling Funding Prohibition Act."

I am testifying today in my capacity as Executive Vice President and Chief Financial Officer of the New York Racing Association, a non-profit corporation that owns and operates New York's three major racetracks—Aqueduct in Queens, Belmont Park in Nassau County and Saratoga Race Course in Saratoga Springs.

THE PARI-MUTUEL RACING AND BREEDING INDUSTRY

Pari-mutuel horseracing, including off-track and inter-track wagering, is legal in 43 states and involves the racing of Thoroughbreds, Standardbreds, Quarter Horses, Arabians, Appaloosas and Paints. There are over 175 racetracks in the U.S. Racing and racehorse breeding is a widespread and diverse industry that includes gambling, sport, recreation and entertainment and is built upon an agricultural base that involves the breeding and training of the horses.

Economic Impact

According to the study of the Economic Impact of the Horse Industry in the United States done by Barents Group, LLC, the economic and fiscal consulting unit of KPMG Peat Marwick LLP, for the American Horse Council Foundation, racing and racehorse breeding have a total economic impact in the U.S. of \$34 billion and generate 472,800 total full-time-equivalent jobs. There are 941,000 people and 725,000 horses involved in the racing industry.

Wagering on horseracing is permitted in 43 states and there is an active horse breeding and training business in all 50 states. In many, the economic contribution of the racing and breeding industry to state and local economies is substantial and the industry ranks among the state's most significant economic entities. For example, in New York, it involves 26,000 horses, has a \$2.5 billion economic impact and generates 33,600 full-time equivalent jobs; in Florida, it involves 37,000 horses, has a \$2.1 billion economic impact and generates 27,300 full-time equivalent jobs; in California it involves 69,000 horses, has a \$4.1 billion economic impact and generates 52,000 FTE jobs; in Illinois, it involves 52,000 horses, has a \$2 billion economic impact and generates 30,700 FTE jobs; in Ohio, it involves 40,000 horses, has a \$1.3 billion economic impact and generates 17,000 FTE jobs; and in Texas, it involves 74,000 horses, has a \$1.8 billion economic impact and generates 27,900 jobs.

Pari-mutuel racing generates over \$500 million annually in direct state and local revenue from pari-mutuel taxes, track licenses, occupational licenses, admission taxes and miscellaneous fees.

Racing as a Sport

Racing is an activity that attracts many fans who appreciate it and follow it as a sport and who enjoy the excitement of the race and the athletic ability of the horses. The Triple Crown races are considered among the most important sporting events conducted in the United States each year and are widely reported in the sports media. Over 130 additional hours of top Thoroughbred races are broadcast on national television each year, including the Breeders' Cup and the National Thoroughbred Racing Association Champions on Fox Series. The national championships of Standardbred and Quarter Horseracing are also televised nationally and widely covered by the media. In addition, most major U.S. newspapers cover racing and print the results of the races at their local tracks on a daily basis, much like they print the box scores of other sports.

The Pari-Mutuel System

While horseracing is a sport on which one can gamble, it would be erroneous to assume that pari-mutuel wagering is the same as other forms of gambling. Unlike most other forms of gambling, horseracing uses the pari-mutuel system in which bettors wager against one another, rather than against the "house." Of the total amount wagered on a particular race, approximately 80% is returned to winning bettors. The other 20%, called the "takeout," is shared between the state government, the racetrack and the horsemen who race at the track. Takeout rates, which vary from state to state, are published in track programs, which are available at racetracks and at simulcast wagering sites away from the track, so that fans know the rates and how they might affect their wagering.

Wagering computations are accomplished by a totalisator machine, a computer, which adds bets over and over again during the course of betting. Every 30 to 60 seconds the "tote" flashes new betting totals and odds for each horse. The machines contain a number of features designed to minimize the potential for pari-mutuel fraud or machine malfunction. These features include bar-coded and randomly-numbered tickets and duplication of all critical functions by two computers working independently of one another.

I point this out because the pari-mutuel system and the published information available ensure that the public has easy access to data regarding their true chances of winning. There is little chance of manipulating the odds and therefore the payouts. The use of the tote machine allows bettors to determine their chances of winning every 30 to 60 seconds. In addition, the race upon which the wager is made, and paid, is a public event, watched by fans at the track or off-track facility, often viewed by others on television or cable, and always overseen by the stewards at the track itself and the state racing commission to ensure the integrity of the race.

In 1999, over 30 million people attended the races and wagered over \$16 billion, approximately 80% of which was returned to the winning players.

FEDERAL AND STATE POLICIES ON GAMBLING

Gambling, including that conducted on horseracing, has always been of concern to the federal and state governments. Throughout American history, the prohibition or legalization and regulation of gambling have primarily been a function of the states. The only time that the federal government has become involved has been when one or more states could not solve a problem without federal intervention. But even in these instances, for the reasons discussed above and others, pari-mutuel racing has often been either treated differently or specifically considered under federal gambling laws. For example, pari-mutuel horse racing is the only form of wagering for which Congress has enacted a federal law, the Interstate Horseracing Act of 1978 (IHA), to regulate and encourage its interstate development. The racing industry has developed to its current status under a regulatory framework of state law and regulation and the IHA (discussed below). If racing and breeding hopes to continue to compete in today's economy, it must be able to continue to do so under these same statutes.

State Regulation - A Long History

Pari-mutuel racing has been conducted in the United States under state authority and regulation for over 75 years. In every state that has allowed legalized wagering on horseracing, strict state oversight and regulation has accompanied its introduction and growth. In each state the pari-mutuel industry is regulated by an agency most commonly known as the state racing commission. Among commission prerogatives are the licensing of track and horse owners, trainers, jockeys, drivers and all others involved in the pari-mutuel sport, and the promulgation and enforcement of the specific regulations under which the industry must operate. All matters pertaining to the operation of pari-mutuel racing, including wagering, are regulated by these agencies on behalf of the governors and state legislatures. Racing commissions have also successfully formed two national groups to oversee, draft rules and propose other uniform business practices to govern interstate pari-mutuel wagering issues.

Over the years the states have consistently acted to closely regulate legal wagering and protect the public's interest in pari-mutuel sports. The actions of state legislatures and the racing commissions which carry out their policies have been predicated on the desire to: (1) maintain the integrity of the events on which the public is allowed to wager; (2) oversee the state's tax-related and economic interest in that wagering; (3) ensure that licensees meet specific standards of qualification; and (4) control any unsavory elements which may attempt to associate with the wagering aspects of the sport.

The Interstate Horseracing Act of 1978

In 1978, Congress enacted a federal statute that specifically deals with interstate gambling on horseracing. The Interstate Horseracing Act made clear that a racetrack controlled wagering on its races in interstate commerce and provided for industry and regulatory approvals before betting was permitted between jurisdictions where the wagering was legal.

In the findings to the IHA, Congress said that states have the primary responsibility for determining what forms of gambling may take place within their borders, but that the Federal government should prevent interference by one state with the gambling policies of another. In the

IHA Congress provided that with respect to the limited area of interstate off-track wagering on horseracing:

There is a need for Federal action to ensure that States will continue to cooperate with one another in the acceptance of legal interstate wagers.

Importantly, in passing the IHA, Congress specifically recognized that "pari-mutuel horseracing is a significant industry which provides substantial revenue to the States" and that "properly regulated and properly conducted interstate off-track betting may contribute substantial benefits to the States and the horseracing industry."

Consistent with these findings, Congress stated as a matter of congressional findings and policy that:

It is the policy of Congress in this chapter to regulate interstate commerce with respect to wagering on horseracing, in order to further the horseracing and legal off-track betting industries in the United States.

The combination of state statutes and regulations and the IHA have provided the racing industry with a workable regulatory framework for over two decades that has allowed the industry to develop its current activities within clear parameters and guidelines.

CURRENT ACTIVITIES OF RACING

The dissemination of information about racing, simulcasting, off-track and intertrack wagering, common pool wagering and account wagering have been initiated, operated and expanded under the IHA and state approval, licensing and regulation.

Information

Communication today is very complicated in the highly complex and ever-changing technological world. In this environment new industries have sprung up virtually overnight forcing existing industries to adapt and change practices in order to compete for the public's support. This is particularly true in the areas of wagering and entertainment.

Like others, the horseracing industry has had to adapt and change dramatically in the face of exploding competition and new technology. An example of that is that many racetracks, horsemen's associations and private businesses are now advertising and offering information on the sport through various media, both traditional and more technological state-of-the-art, including the Internet.

The process of betting on horseracing and selecting the winner is called "handicapping." It is a cerebral process for serious bettors who spend a great deal of time at the track, and elsewhere, pouring over information that will help them select the winners of races. For students of the sport this is not a random selection. The "handicapping" information used in this process

has been available in written forms since racing began and is similar to the statistical information available for other sports.

The racing industry is presently offering a great deal of this type of "handicapping" information in publications, over toll-free numbers and over the Internet in the form of advertisements for state-licensed and regulated race tracks, information and "how-to" sites, "tout" sheets, past performance information, betting lines and similar information, that will market the racing product to new fans and allows existing patrons to participate more successfully.

This continued flow of information is critical to the racing business and should not be affected by any changes to current law.

Simulcasting and Common Pool Wagering

Prior to 1970, legal pari-mutuel wagering on racing was limited to fans at the track where the race was run. In 1970, the New York legislature approved off-track wagering. As an aside, at that time the computerized system operated by New York OTB (Off-Track-Betting) was one of the first real-time, on-line computer systems in the U.S. Since then, many states, and the federal government under the Interstate Horseracing Act, have authorized racetracks to simulcast or transmit signals of their races off-track into other states and jurisdictions under applicable law.

With the continued development of technology, by the early 1980s racing was able to make its product better for its patrons again. Additional technological changes allowed the linking of pari-mutuel wagering pools among tracks in separate jurisdictions, called "commingled pools," so that payouts could better reflect the size and wagering behavior of the entire betting public.

The racing industry's continuing utilization of state-of-the-art technology has resulted in the ability of the industry to survive and offer its patrons a better product. In fact, today over eighty percent of the money wagered on racing is bet at facilities or locations other than where the race itself is run, all with the approval and regulation of the states involved.

Account Wagering

Another form of pari-mutuel wagering on racing that has expanded over the two last decades is account wagering. Currently, ten states, including Connecticut, Kentucky, Louisiana, Maryland, Nevada, New Hampshire, Ohio, Oregon, Pennsylvania and New York, have enacted legislation or regulations specifically authorizing the acceptance of account wagers and a number of other states are considering similar legislation. For example, California is currently considering legislation that would allocate the proceeds from account wagering by California residents among the California pari-mutuel industry.

Account wagering is not a new activity in the United States. In fact, personal account betting has been offered in New York for over 25 years by New York City Off-Track-Betting and upstate New York Off-Track-Betting entities-- all state agencies. These entities have accepted wagers from residents of New York and other states who had established accounts in New York.

In order to keep pace with modern technological advances, the horseracing industry needs to be able to continue these activities, provided that such activities are conducted in accordance with the IHA and applicable state laws or regulations.

In summary, the IHA and individual state statutes and regulations, under the supervision of state racing commissions, combine to form a very capable regulatory system for pari-mutuel racing and one that has not required the intervention of federal enforcement since its inception.

THE INTERNET GAMBLING FUNDING PROHIBITION ACT – H.R. 4419

The Internet Gambling Funding Prohibition Act, H.R. 4419, is a response to the proliferation of unregulated foreign offshore wagering entities operating in violation of state bookmaking laws and beyond the reach of the U.S. legal system. The pari-mutuel racing industry is opposed to unregulated gambling in any form.

The regulated and licensed pari-mutuel horseracing industry understands the intent of this legislation. The Internet has enabled wagering activity on our sport to steadily move offshore in recent years, where foreign operators can escape United States regulation, taxes and mandated revenue sharing provisions with state and local businesses. Money is leaving the country and not returning. The viability of these offshore entities is heavily dependent on funds transfer mechanisms to get money from the United States to offshore locations and vice versa, which makes the concept of this bill and its possible effectiveness in combating illegal gambling appealing.

Offshore Internet gambling has already had a negative impact on the racing industry and, if current projections prove to be true, that impact will be devastating in just two years. Bear Stearns and the British firm Datamonitor, both respected sources of market research information, project that at current growth rates, Americans will gamble between \$3 billion to \$3.5 billion with offshore businesses via the Internet by 2002. Of that amount, the firms project that \$750 to \$850 million will be bet on horseracing. Only a small fraction of the offshore wagering, if any, will return to support the states, state-licensed and regulated racetracks, horsemen (who depend on wagering revenues for a living) and the huge agri-business that racing supports.

However, the effectiveness of the Internet Gambling Funding Prohibition Act in curtailing the use of financial instruments to conduct unregulated or illegal offshore gambling through a criminal statute is questionable. The bill prohibits gambling businesses or people involved in the business of gambling from accepting funds in the form of credit, credit cards, electronic funds transfers or even checks from another person if it relates to Internet gambling. The problem is that most, if not all, of the companies and individuals offering unregulated or illegal gambling on the Internet are physically located outside of the United States, making the enforcement of this criminal statute by federal authorities extremely complicated and unlikely.

Aside from criminal punishment of those involved in Internet businesses conducting illegal gambling, the bill also allows federal banking authorities to issue orders prohibiting depository institutions from extending credit, facilitating an extension of credit, electronic fund transfer, or money transmitting service, or, in the alternative, paying, transferring, or collecting on any check, draft or other instrument drawn on any financial institution if that institution has actual knowledge

that the funds would be used for Internet gambling. The provision would require that financial institutions, including those issuing credit cards, have actual knowledge of the use or purpose of all funds transferred in the billions of financial transactions processed daily in this country regardless of privacy concerns or established banking policy. It would not apply to foreign financial institutions lawfully doing business with U.S. customers and transferring funds to offshore Internet gambling operators at their instruction. Moreover, this enforcement action is punitive to a financial institution in its lawful and normal course of business, but not to the offshore gaming operator or the gambler acting in violation of federal or state laws.

Much clearer are the dramatic negative implications that the bill would have on legitimate state regulated and licensed businesses operating in this country, like horse racing. As written, the bill would have the unintended consequence of criminalizing several important aspects of this economically beneficial state-sanctioned enterprise. The language in the bill defines the term "Internet" as "the international computer network of both Federal and nonfederal interoperable packet switched data networks." Internet gambling is a "means to place, receive, or otherwise make a bet or wager by any means which involves the use, at least in part, of the Internet." It criminalizes the use or acceptance of almost all funds transfer options including credit, credit card, check, or electronic funds transfers in connection with Internet gambling as it is broadly defined.

When most of us think of the Internet, we think of the World Wide Web, where individuals can easily access any website offering goods and services in an unrestricted fashion regardless of geographic location. The broad definitions of the Internet and Internet gambling in this bill, however, encompass much more than that. An "international computer network of both Federal and nonfederal interoperable packet switched data networks" can be applied to much more than the World Wide Web. It involves most of the emerging computer network technology that businesses use to perform banking and communications functions—any e-commerce computer network could fall under a loose interpretation of this definition. The definition of Internet gambling is also sweeping in its scope. A business process or transaction system that uses the broadly defined Internet "at least in part" would constitute a criminal violation. Most important, defining the Internet in the ever-dynamic universe of technology is tempting fate and likely to lead to unintended consequences. Many experts predict that basic telephone and television communications will be conducted through Internet technology in the not-too-distant future. Any telecommunications network could be defined one day as use of the Internet.

Today off-track interstate common pool simulcast wagering among the 43 states where pari-mutuel wagering on horseracing is legal generates 75% to 80% of the \$16 billion annually wagered on horseracing through state licensed operators. Interstate simulcast wagering on horseracing is heavily dependent on computers and sophisticated computer networks to transfer wagering information between regulated pari-mutuel totalisator systems at racetracks, off-track betting facilities, satellite wagering facilities and wagering hubs to and from states where pari-mutuel wagering on horseracing is legal. Wagers are transmitted and placed using these systems and networks instantaneously up to the second that a horse race begins. After all of the day's racing has been concluded, racetracks must settle their accounts based on the amount of money wagered at each licensed facility and the amount actually won by or paid out to the customers at each facility. Currently, much of the data is transmitted through frame relay technology that fits the description "packet switched data networks," but it most assuredly is not the Internet – yet.

This business-to-business process has traditionally been accomplished by check or other like financial instruments and has been regulated by each individual state under the guidelines of the Interstate Horseracing Act, which gives state regulatory authorities, racetracks and horsemen the ability to control the practice. The interaction between state governments, which have the authority to allow or prohibit gaming, and the federal government has provided a workable regulatory system and substantial benefit for the pari-mutuel horseracing industry and the U.S. economy for over twenty years. The racing industry is currently in the planning stage of an e-commerce solution to employ automated computer networks for the payment system as well as the wagering system in interstate simulcasting. The heavily regulated business-to-business system again would be subject to state oversight and would make the process faster, more efficient and more secure. Additionally, several states, including New York, have had laws on the books allowing for pari-mutuel account wagering for over twenty years. Many state-licensed account wagering operators already use computer networks involving, if only to e-mail financial data, the Internet to convey racing and wagering information to and from account wagering customers.

It is clear that Internet Gambling Funding Prohibition Act, as written, would contradict existing federal legislation for interstate pari-mutuel wagering (the IHA) and state simulcasting and account wagering legislation. Business-to-business funds transfers by check or electronic means among racetracks to settle simulcast accounts would be illegal, as would any form of funds transfer between consumers and state licensed racetracks and account wagering providers. These functions, which are the backbone of our business and have been evolving over twenty years of use, could possibly be in violation of federal law should this bill become law, bringing an end to horseracing.

The Internet Gambling Funding Prohibition Act draws no distinction between legitimate state sanctioned, licensed and regulated businesses, such as pari-mutuel racing, and the emerging, unregulated, offshore gaming businesses that are violating state bookmaking statutes and operating beyond the reach of U.S. law. Due to the lack of such a distinction and the broad definitions of the Internet and Internet gambling in this bill, it has the unintended consequence of criminalizing critical business functions of legitimate state licensed businesses, and the agribusiness they support, that have a \$34 billion effect on the U.S. economy and support 487,000 full-time jobs for U.S. residents.

In summation, the authors of this bill state that their intent is to address Internet gambling through offshore jurisdictions and the money laundering and debt collection concerns associated with these unregulated activities. The bill, however, jeopardizes the current and planned activities of the legitimate, domestic, state-licensed and regulated businesses conducting pari-mutuel wagering on horseracing and compromises their ability to use emerging technologies to improve existing operations in the future. Using the Internet for legitimate activities should not be criminalized. The pari-mutuel horseracing industry would support amending the language of the Internet Gambling Prohibition Act to exempt wagering activities that are permitted under federal or state law.